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EXAMINER

ESTREMSKY, GARY WAYNE

ART UNIT PAPER NUMBER

3676

DATE MAILED: 11/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/973,953

Applicant(s)

BYRLA ET AL.

Examiner

Gary Estremsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25, 27 and 29 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4 and 8 is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7, 9-25, 27 and 29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date None
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 19, 25, and 29 are rejected under 35 U.S.C. 102(b) as being anticipated by United Kingdom Patent Application No. GB 2 264 436 to Amey.

Amey '436 teaches Applicant's claim limitations including : a "basic body" - 3,4, a "luminous body" - 5,6 mounted thereto as described.

The push button (6) of the reference is illustrated on the face of the Patent in its mounted *connection* with respect to the balance of structure comprising the handle assembly. One of ordinary skill in the art would recognize that the push button is inherently provided with structure for guiding it between the described in and out positions in view of the description and illustration. Broad, generic limitations for "mounted by way of a guide" and "secured by a connection in a

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desired position” do not define any structure that can be relied upon to patentably distinguish from the prior art.

Unlike claim 18 which positively recites the claimed invention to be “arranged in a vehicle interior” it’s noted that the “vehicle interior space cover” and “lock for the cover” do not form part of the invention of claim 19 for example. It has been held that a preamble is denied the effect of a limitation where the claim is drawn to a structure and the portion of the claim following the preamble is a self-contained description of the structure not depending for completeness upon the introductory clause. *Kropa v. Robie*, 88 USPQ 478 (CCPA 1951). It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). See MPEP 2114. It is the examiner’s position that the handle of the reference is inherently capable of being used in a trunk space.

3. Claims 1, 9, 13, 17-19, 25, and 29 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Pat. No. 6,209,933 to Ang.

Ang '933 teaches Applicant’s claim limitations for a passenger car including : an “unlocking handle” - 28 as shown in Fig 5, “basic body” - 60, “luminous body” - 62 which is mounted thereon in a two step injection molding process, a “vehicle interior space” - the vehicle trunk.

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As shown in Fig 5, phosphorescent portions are mounted in a connection where sloped sides of that connection read on broad limitation of "by way of a guide". No structure is defined by broad limitations that can be relied upon to patentably distinguish from the structure of the prior art.

As regards claim 9, Ang '933 teaches "illuminating device" - 48 and "control" in Fig 4 where that light inherently provides "interior illumination" and reads on present alternative limitation.

As regards claim 25, one of ordinary skill in the art would recognize that broadly-defined steps are inherent to assembly of the separate parts so as to arrive at the illustrated handle assembly.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 3, 13, 17-19, 21, 23, 25, and 29 are rejected under 35 U.S.C. 103 as being unpatentable over U.S. Pat. No. 6,527,313 to Takahashi in view of U.S. Pat. No. 5,088,781 to Ono.

Takahashi '313 teaches Applicant's claim limitations for a passenger car including : an "unlocking handle" - 12 as shown in Fig 4, "basic body" - 16, "luminous body" - 17.

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While reference describes part 17 as being "carried by" part 16 (whereby their connection as shown and described is inherent), the reference does not describe the connection. One of ordinary skill in the art would presume the knob to a separate part since it is luminous and normally the levers of a handle and latch are stamped from steel. Regardless of any assumption, it would have been obvious to one of ordinary skill in the art to make the luminous portion of the handle separate from the lever and to make the lever portion from a stronger material such as steel in order to utilize the disclosed device for the intended purpose. Ono '781 teaches that it is well known in the art to attach a separate grip portion onto a lever portion. The connection includes a detent and guide structure for aligning the parts during their assembly together. One of ordinary skill in the art would have more than reasonable expectation of success in attaching the knob (17) of Takahashi '313 to the lever (16) using a connection as taught by Ono '781 since it would not otherwise affect the function of the device.

As regards claim 25, one of ordinary skill in the art would recognize that broadly-recited method steps are inherent to conventional manufacture of the structure disclosed by the prior art due to the particular arrangement of different materials in the finished product where those materials require separate manufacture and assembly.

6. Claims 1, 13, 18, 19, 25, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,445,326 to Ferro in view of United Kingdom Patent Application No. GB 2 264 436 to Amey.

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Ferro '326 teaches providing a luminous handle for emergency unlocking of a vehicle trunk lid from interior of the trunk space. The reference discloses a luminous coating but not a distinct luminous body mounted onto a basic body as claimed. However, Amey '436 discloses that it is well known in the art of handles to use either a luminous coating, or luminous body made of luminous material mounted on a basic body for the purpose of making a handle luminous. It would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to provide a luminous handle on the device of Ferro '326 by forming a luminous portion distinct from a basic portion and mounting it thereto in order to reduce quantity of luminous material required for manufacture (as compared to forming the handle integrally from luminous material) and to increase durability of the luminous quality of the handle (as compared to luminous coating) as recognized by one having ordinary skill in the art. Furthermore, one of ordinary skill in the art would have more than a reasonable expectation of success since both means for obtaining a luminous handle are well known in the art of handles and the choice of either would not otherwise affect function of the device.

7. Claim 24 is rejected under 35 U.S.C. 103 as being unpatentable over U.S. Pat. No. 6,527,313 to Takahashi in view of U.S. Pat. No. 5,088,781 to Ono and further in view of WO 99/31171 to Hannacolor.

Although Takahashi '313, as modified, does not teach the luminous body consisting of luminescent crystal mixture which is mixed with a transparent

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plastic material and/or is embedded therein, Hannacolor '171 teaches that it is well known to mold or extrude phosphorescent plastic articles from thermosetting resin and phosphorescent crystal pigments - see beginning page 3 for example. It would have been obvious to one of ordinary skill in the art at the time of the invention to manufacture the luminescent portion of the handle according to teachings of Hannacolor '171 in order to allow for indicia to be laser marked thereon, and since with or without laser marking it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

8. Claims 5, 16, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 5,445,326 to Ferro in view of United Kingdom Patent Application No. GB 2 264 436 to Amey and further in view of WO 99/31171 to Hannacolor.

Although Ferro '326, as modified in view of Amey '436 does not teach the luminous body consisting of luminescent crystal mixture which is mixed with a transparent plastic material and/or is embedded therein, Hannacolor '171 teaches that it is well known to mold or extrude phosphorescent plastic articles from thermosetting resin and phosphorescent crystal pigments - see beginning page 3 for example. It would have been obvious to one of ordinary skill in the art at the time of the invention to manufacture the luminescent portion of the handle according to teachings of Hannacolor '171 in order to allow for indicia to be laser

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marked thereon, and since with or without laser marking it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

In re Leshin, 125 USPQ 416.

9. Claims 1, 2, 9, 10, 13, 14, 17-20, 25, 27, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,086,131 to Bingle in view of U.S. Pat. No. 1,762,447 to Lowes.

Bingle '131 teaches Applicant's claim limitations including : a "passenger car" - see abstract, having an "unlocking handle" - 12. Bingle '131 teaches a luminescent handle at col 7, lines 11-14 but does not teach a distinct "basic body" and "luminescent body mounted thereon". However such handles are long known in the art as taught by Lowes '447 whereby it would have been obvious to one of ordinary skill in the art at the time of the invention to provide a luminous handle for the device of Bingle '131 constructed from a basic body with a luminous body mounted thereon as taught by Lowes '447 in order to provide a handle made from a strong material and has luminescent feature to make it easy to locate in darkness.

As regards claim 2, the handle construction of Lowes '447 as relied upon reads on limitation of "dovetail guide" as shown in Fig 3 of that reference.

As regards claim 9, light inherently provides "interior illumination" and reads on present alternative limitation.

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10. Claims 1, 2, 9, 10, 13, 14, 17-19, 25, 27, and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,086,131 to Bingle in view of United Kingdom Patent Application No. GB 2 264 436 to Amey.

Although Bingle '131 teaches a luminous trunk latch release handle, the reference does not explicitly teach separate luminous portion mounted on a base portion of the handle. However, Amey '436 discloses that it is well known in the art of handles to mount a luminous body made of luminous material on a basic body for the purpose of making a handle luminous. It would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to provide a luminous handle on the device of Bingle '131 by forming a luminous portion distinct from a basic portion and mounting it thereto in order to reduce quantity of luminous material required for manufacture (as compared to forming the handle integrally from luminous material) and to increase durability of the luminous quality of the handle (as compared to luminous coating) as would be recognized by one of ordinary skill in the art. Furthermore, one of ordinary skill in the art would have more than a reasonable expectation of success since both methods of obtaining luminosity are well known in the art of handles and the choice of either would not otherwise affect function of the device.

11. Claims 5, 6, 12, 16, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,086,131 to Bingle in view of United Kingdom

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Patent Application No. GB 2 264 436 to Amey and further in view of WO 99/31171 to Hannacolor.

Although Bingle '131, as modified in view of Amey '436 does not teach the luminous body consisting of luminescent crystal mixture which is mixed with a transparent plastic material and/or is embedded therein, Hannacolor '171 teaches that it is well known to mold or extrude phosphorescent plastic articles from thermosetting resin ("transparent plastic material") and phosphorescent crystal pigments beginning page 3 for example. It would have been obvious to one of ordinary skill in the art at the time of the invention to manufacture the luminescent portion of the handle according to teachings of Hannacolor '171 in order to increase toughness and durability of the luminescent body portion while taking advantage of modern phosphorescent materials as would be recognized by one of ordinary skill in the art, and since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

12. Claims 3, 11, 15, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,086,131 to Bingle in view of U.S. Pat. No. 1,762,447 to Lowes and further in view of U.S. Pat. No. 5,088,781 to Ono.

Bingle '131, as modified teaches the claimed invention except for attachment using a detent connection. Ono '781 teaches that it is well known in the art of handles to attach a first part to a base part using a detent connection.

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It would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to attach the luminous portion to the base portion using a detent connection as taught by Ono '781 in order to rapidly assemble a strong luminescent handle at reduced manufacturing cost or other design-related reason not affecting function of the resulting product.

13. Claims 3, 11, 15, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,086,131 to Bingle in view of United Kingdom Patent Application No. GB 2 264 436 to Amey and further in view of U.S. Pat. No. 5,088,781 to Ono.

Bingle '131, as modified teaches the claimed invention except for attachment using a detent connection. Ono '781 teaches that it is well known in the art of handles to attach a first part to a base part using a detent connection. It would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to attach the luminous portion to the base portion using a detent connection as taught by Ono '781 in order to rapidly assemble a strong luminescent handle at reduced manufacturing cost or other design-related reason not affecting function of the resulting product.

14. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,086,131 to Bingle in view of U.S. Pat. No. 1,762,447 to Lowes and further in view of U.S. Pat. No. 5,088,781 to Ono and further in view of in view of WO 99/31171 to Hannacolor.

Although Bingle '131, as modified, does not teach the luminous body consisting of luminescent crystal mixture which is mixed with a transparent plastic material and/or is embedded therein, Hannacolor '171 teaches that it is well known to mold or extrude phosphorescent plastic articles from thermosetting resin ("transparent plastic material") and phosphorescent crystal pigments beginning page 3 for example. It would have been obvious to one of ordinary skill in the art at the time of the invention to manufacture the luminescent portion of the handle according to teachings of Hannacolor '171 in order to allow for indicia to be laser marked thereon and since with or without laser marking, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

15. Claims 5, 16, and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 6,209,933 to Ang in view of WO 99/31171 to Hannacolor.

Although Ang '933 does not teach the luminous body consisting of luminescent crystal mixture which is mixed with a transparent plastic material and/or is embedded therein, Hannacolor '171 teaches that it is well known to mold or extrude phosphorescent plastic articles from thermosetting resin ("transparent plastic material") and phosphorescent crystal pigments beginning page 3 for example. It would have been obvious to one of ordinary skill in the art at the time of the invention to manufacture the luminescent portion of the handle

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according to teachings of Hannacolor '171 in order to allow for indicia to be laser marked thereon and since with or without laser marking, it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

In re Leshin, 125 USPQ 416.

Allowable Subject Matter

16. Claims 4 and 8 are allowed.

Response to Arguments

17. Applicant's arguments have been considered but are not persuasive. Limitations of "by way of a guide" and "is secured in a desired position on the basic body by a connection" do not include any structural detail that can be relied upon to patentably distinguish from the prior art. Arguments for allowability of claims 23 and 24 not persuasive since they do not have all elements arranged as set forth in the allowable claim.

Conclusion

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 703 308-0494. The examiner can normally be reached on M-Thur 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary Estremsky
Primary Examiner
Art Unit 3676